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ABSTRACT

A model policy and rules for maintaining a cooperative effort between school administrators and law enforcement officials are presented in this pamphlet. The policy and rules were developed by the Iowa State Department of Public Instruction. The model policy stresses cooperation between administrators and law enforcement officers and respect for student rights. The model statement of rules covers conducting investigations in the educational environment, taking a student into custody, disturbance of the school environment, coordination of policies by enforcement officials, and informing school staff members of rules and policies. (Author/JM)

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A Legal Memorandum

NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS
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SCHOOL ADMINISTRATORS AND LAW ENFORCEMENT OFFICIALS

INTRODUCTION

A continuing source of concern to principals and other school administrators is their proper role and response to police officers and other law enforcement officials, such as juvenile officers desiring to pursue their responsibilities in the school during the school day. This has also been the concern of some state education officials. As a result, the Department of Public Instruction of Iowa decided to prepare a model policy and rules for maintaining a cooperative effort between school administrators and law enforcement officials. While this model contains a number of ethical and educational judgments as well as conclusions of law, NASSP believes that it should be of use and interest to its members throughout the country. No portion of the model, of course, should be adopted in other localities without full and sufficient review both by local school officials and school counsel.

The department's original interest was brought to focus on this problem by an incident in which a junior high school boy was accused of attacking two younger children. Although the alleged attack had not taken place on school property, law enforcement officials visited the accused boy's school, had him removed from class, and took him to the home of the accusers for identification. The child victims said that the accused was not their attacker. All of this occurred without informing the accused student of the accusations against him, of any rights which he might have, and without any attempt being made to contact his parents. The first the parents knew of the incident was through a telephone call from the victims' mother who called to apologize for the mistaken accusation.

When the parents of the accused boy contacted the police to ask why these actions had been taken without any attempt being made to contact them, the police were hostile and unapologetic, claiming that their responsibility to solve crime overrode any need for procedural niceties. Upon asking similar questions at the school, the parents were given no explanation. Apparently, local building administrators felt that they must cooperate with the police, even though the school district had an unwritten policy against the release of students to police for arrest or interrogation without giving prior notice to parents. The superintendent subsequently promised to try to develop a closer working relationship with the police which would avoid any recurrence of similar situations.

The purpose of this Legal Memorandum is to provide a model policy governing this relationship, and some rules for implementing as well as understanding the legal basis for such a policy.

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MODEL STATEMENT OF POLICY

It shall be the policy of the _____ School District that a reasonably cooperative effort be maintained between the school administration and law enforcement agencies. Law enforcement officials may be summoned in order to conduct an investigation of alleged criminal conduct on the school premises or during a school-sponsored activity or to maintain the educational environment. They may also be summoned for the purpose of maintaining or restoring order when the presence of such officers is necessary to prevent injury to persons or property. Administrators have the responsibility and the authority to determine when the assistance of law enforcement officers is necessary within their respective jurisdictions. The School District's administrators shall at all times act in a manner which protects and guarantees the rights of students and parents.

MODEL STATEMENT OF RULES

I INVESTIGATION CONDUCTED IN THE EDUCATIONAL ENVIRONMENT

A) Initiated by School Administrators

1. Conducted by Administrators

Principals shall have the authority and duty to conduct investigations and to question students pertaining to infractions of school rules, whether or not the alleged conduct is a violation of criminal law. Such investigations shall be conducted in a manner which does not interfere with school activities.

Comment: Each school district should determine which specific administrators are to be assigned various responsibilities.

2. Conducted by Law Enforcement Officers

a. The principal shall determine when the necessity exists that law enforcement officers be contacted to conduct an investigation of alleged criminal behavior which jeopardizes the safety of school property or which interferes with the operation of the schools.

b. The principal may request that law enforcement officers conduct an investigation and question students who are potential witnesses of such alleged criminal behavior during school hours. A reasonable attempt shall be made to contact the student's parents, guardian or representative prior to questioning by law enforcement officers. Reasonable requests of the parents, guardian or representative shall be observed. Such contacts or attempted contacts with parents, guardian or representative shall be documented by the administrator involved. In the absence of a student's parents, guardian or representative during any questioning of such students, the principal or other designated certificated school staff person shall be present.

Comment: *A reasonable effort to contact the student's parents would normally include attempts to contact at home, at work, or at places frequented by the parent. Reasonable requests of the parents would include requests to be present or to contact an attorney, if time and circumstances permit. This provision attempts to give guidance to the staff persons present during the investigation. Their primary function is to attempt to preserve the rights of students and parents without being an advocate.*

c. If the investigation has centered on any particular student suspected of such alleged criminal activity, the procedure for taking students into custody by the police set forth in Section II shall be followed to the extent that they do not interfere with reasonable law enforcement procedures.

B) Initiated by Law Enforcement Officers

Although cooperation with law enforcement officers will be maintained, it should not normally be necessary for law enforcement officers to initiate and conduct any investigation and questioning on the school premises during school hours pertaining to criminal activities unrelated to the operation of the school. Only in demonstrated emergency situations, when law enforcement officers find it absolutely necessary, will they be voluntarily permitted to conduct such an investigation during school hours. These circumstances should ordinarily be limited to those in which delay might result in danger to any person, flight from the jurisdiction of a person reasonably suspected of a crime, or destruction of evidence.

In such cases, the officers shall be requested to obtain prior approval of the principal or other designated person, before beginning such an investigation on school premises. The administrator shall document the circumstances of such investigations as soon as practicable. Alleged criminal behavior related to the school environment brought to the principal's attention by law enforcement officers shall be dealt with under the provisions of Section I. A. 2.

C) Questioning of Students During Investigation

1. Violations of School Rules

In instances where school rules have allegedly been violated, the principal or designee may contact the suspected rule violator or potential witness to the infraction.

a. The suspect student should be advised orally or in writing of the nature of the alleged offense and of the evidence, if any, against the student. The student shall be informed that he has a right to remain silent, and that anything he does say could be used against him in a disciplinary proceeding.

Comment: *The provisions of a "Miranda type" warning contained in the last sentence are not generally assumed to be required in an educational setting. However, other considerations,*

such as the desirability of demonstrating the school's humane treatment of students may suggest such treatment. When the investigation is completed and it is determined that disciplinary action may be in order, the due process requirement of allowing the student to present the student's version of the facts is necessary. See school procedures for due process in disciplinary matters.[1]

b. In questioning a potential student witness to an alleged disciplinary infraction, care should be taken by the administrator to insure that there is a reasonable likelihood that the student was indeed a witness. School officials should not engage in detailed questioning of students at random without reasonable cause in hope of gathering information as to school misconduct. Probable witnesses should be told the nature of the alleged misconduct and the reason to believe that they were a witness. Such students should be given the opportunity to give their consent before answering questions of school officials.

Comment: Circumstances may arise where it would be advisable to have another adult present during questioning of students.

2. Violations of Criminal Law

a. During an investigation of violation of school rules, it may come to the attention of the administrator that the investigated activity may also be a violation of criminal law. In proceeding with the investigation the principal can attempt to ascertain whether there is sufficient justification to believe that a criminal offense was committed that warrants contacting law enforcement officials.

Comment: Violations of some school rules are also violations of criminal law, and the discretionary judgment of the administrator involved is very important. It is not likely that law enforcement officials would be interested in bringing assault and battery charges against two students involved in a fight; however, sale or possession of drugs would most assuredly be of interest to them.

b. Where a suspected violation of criminal law has occurred on the school grounds, involving the operation of the school, or during a school-sponsored activity, law enforcement officials may be notified and their presence requested for the questioning of suspected students. Unless circumstances dictate otherwise, questioning of the student shall not begin or continue until the law enforcement officers arrive. Reasonable attempts shall be made to contact a student's parents, guardian or representative who, unless an emergency exists, shall be given the opportunity to confer with the student and to be present with the student during such questioning. The administrator shall document the contact or attempted contact with the student's parents, guardian or representative . In the absence of parent and student consent, a student should not be questioned by law enforcement officers. The law enforcement

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1. *Miranda v. Arizona*, 384 U.S. 436 (1966) was the criminal case in which the U.S. Supreme Court formulated the requirement that all suspects of crime taken into custody by law enforcement officers must be warned about making statements which might be self-incriminating. The purpose of this requirement was to protect citizens both from giving potentially unreliable evidence which could be damaging, and to discourage police from seeking such statements through coercive techniques or intimidating circumstances.

officers may wish to advise the student of his legal rights. If the parent and the student consent to the questioning, the investigation can continue. If the parent or student refuse consent to the questioning, the law enforcement officers will determine the course of action to be pursued.

Comment: *There is no clear legal requirement that school administrators must give "Miranda type" warnings to students suspected of criminal misconduct when such misconduct is also a violation of school rules. The scanty case law on the subject appears to say that such warnings are not required of school administrators investigating violations of school rules. But, an opposite result might occur when the administrator is investigating criminal conduct not related to school. Information of criminal conduct not related to the schools should be turned over to law enforcement officials, without additional investigation by school officials. Whether or not the law enforcement officers advise a student of his rights in that case is a matter which should be left to the officers.*

II TAKING A STUDENT INTO CUSTODY

A) Students may not be released to law enforcement authorities voluntarily by school officials unless the student has been placed under arrest or unless the parent, guardian or representative and the student agree to the release. Administrators shall make reasonable objections to law enforcement authorities who attempt to remove students from school without placing them under arrest or without the acquiesence of the parent, guardian or representative and the student. When students are removed from school for any reason by law enforcement authorities, every reasonable effort will be made to contact the student's parents, guardian or representative immediately. Such effort shall be documented. Whenever a student is removed from school without an arrest being made, or without acquiescence of the parent, guardian or representative and the student, the administrator shall immediately contact a superior of the law enforcement officers involved and make objection to the removal of the student. The superintendent's office shall be notified immediately of any removal of a student from school by law enforcement officers under any circumstances.

B) The principal shall make reasonable efforts to persuade law enforcement officers not to make arrests or take students into custody on school premises. Whenever the need arises to make arrests or take students into custody on school premises, the principal should make reasonable efforts to persuade the law enforcement officers to utilize a non-uniformed officer in making the arrest.

C) Where it is necessary to take a student into custody on school premises, and time permits, the law enforcement officer shall be requested to contact the school principal and relate the circumstances necessitating such action. When possible, the principal shall have the student summoned to the principal's office where the student may be taken into custody.

D) When an emergency exists, the school principal may summon law enforce- officials to the school to take a student into custody.

E) When a student has been taken into custody or arrested on school premises without prior notification to the principal, the school staff present shall encourage the law enforcement officers to notify the principal of the circumstances as quickly as possible. In the event that the officers decline to notify the principal, the school staff members present shall immediately notify the principal.

F) If at all possible, parents, guardian or representative of the student shall be notified by the principal or other school administrator before the student is taken into custody by law enforcement officers, or as quickly thereafter as can be accomplished. The administrator shall document such notification or attempted notification.

III DISTURBANCE OF SCHOOL ENVIRONMENT

Law enforcement officers may be requested to assist in controlling disturbances of the school environment which the principal or other school administrator has found to be unmanageable by school personnel, and which has the potential of causing harm to students and other persons, or to property. Such potential of possible harm includes members of the general public who have exhibited undesirable or illegal conduct on school premises or at a school event held on school property and who have been requested to leave by an administrator, but have refused or failed to do so.

IV COORDINATION OF POLICIES BY ENFORCEMENT OFFICIALS

School administrators shall meet at least annually with local law enforcement officials to discuss the school district's policy and rules regarding law enforcement contacts with the school district. Law enforcement officials will be asked to instruct their staffs as to the terms of the school's policy and rules.

Comment: This provision is essential. While it is important that relations between law enforcement agencies and schools remain good, law enforcement officials must understand that school personnel are not their agents and that the school has a special responsibility to the students and parents in the community. The cooperation of law officials in controlling actions of their subordinates is very important.

V SCHOOL STAFF MEMBERS SHALL BE APPRISED OF THE CONTENTS OF THESE PROVISIONS AT LEAST ANNUALLY

Final Comment: The Committee developing this model will be updating it as the need arises and would appreciate your comments and suggestions. This model does not address the question of police-school liaison officers. We would like other people's opinions on whether this model should include such officers and how the situation should be handled. (NASSP members outside Iowa should send their comments to Ivan B. Gluckman, general counsel of NASSP.)

Special appreciation is expressed to Larry G. Bartlett, administrative consultant, Iowa Department of Public Instruction for permitting distribution of the model policy and rules in the form of this Memorandum.

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